

**SUBJECT:** Exempting certain prepaid legal services rates from regulation

**COMMITTEE:** Insurance — favorable, with amendment

**VOTE:** 9 ayes — Smithee, Alvarado, Averitt, Brimer, Counts, Driver, Duncan, Shields, Siebert

0 nays

2 absent — Martin, Rudd

**WITNESSES:** For — Nancie Poulos, The Signature Group (Registered only — Dean Cobb and Cordell Hull, The Signature Group)

Against — Pamela Brown, Consumers Union; Kellis Richter, Texas Legal Protection Plans, Inc.

**BACKGROUND:** Prepaid legal services plans offer access to legal services for plan members who pay a monthly fee. The service company contracts with attorneys who provide advice and consultation to the members. Members are not charged any legal fees for advice or consultation. A member who requires more extensive legal help gets it from the attorneys at a reduced rate. The plan's attorneys receive a set administrative fee to cover the cost of preparing paperwork, but are not compensated by the company for the services they provide members.

The plans are regulated under art. 5.13-1 of the Insurance Code by the Texas Department of Insurance (TDI), which determines a plan's rates by using a "loss-ratio" formula. The formula compares the benefits received by members in dollars to the premium rates charged by the plan.

**DIGEST:** HB 1568, as amended, would exempt certain prepaid legal-services plans from premium rate regulation by TDI. Plans would be exempt if they provided only advice and consultation services on a simple legal matter, either alone or in combination with a referral service and the promise of fee discounts on other matters. The bill would take effect September 1, 1993, and would only apply to prepaid legal services contracts that were issued or renewed on or after that date.

**SUPPORTERS  
SAY:**

Companies that offer prepaid legal services to members who pay a periodic fee currently have to justify to TDI the premiums they charge their members. The department requires use of a "loss-ratio" formula in determining premium rates. Use of this formula makes it extremely difficult for these companies to justify their premium rates — no loss is incurred with prepaid legal services as a "loss" is traditionally thought of in the insurance world. Texas is the only state that requires these companies to use a loss-ratio formula in determining premium rates.

Members of these legal-services plans do not pay for simple consultation services. Thus, the companies do not reimburse members for legal fees, as in most insurance contexts. The companies pay the attorneys who participate in the plans only a set administrative fee.

These plans offer a real benefit by making low-cost legal services affordable to the general public. The plans are meant to provide advice before a serious legal problem arises, for a monthly membership fee. If members require more extensive services, they are offered these services at a lower rate than the attorney would otherwise charge. Most plan members are satisfied with the services provided, and many members remain members over a long term. The plans also have a high utilization rate. A member is free to cancel a plan at any time.

The bill would not exempt prepaid legal services providers from regulation by TDI, nor from the state premium tax that providers pay. The bill simply would exempt companies offering certain limited services from having to justify their premium rates.

**OPPONENTS  
SAY:**

HB 1568, as amended, would enable prepaid legal services companies to avoid rate regulation by constructing prepaid legal services plans according to the language in the bill. Texas law protects consumers from unreasonably high premiums by requiring every insurer to file rates and forms with TDI. This is not an unreasonable regulatory burden for these companies, in light of the public interest at stake. Lack of oversight could allow companies to charge an exorbitant amount for premiums. Oversight assures protection against this practice and assures that consumers will receive a reasonable benefit.

Exempting these companies from justifying their premium rates could allow unscrupulous companies to market plans with little or no benefit to the consumer and charge premium rates that do not represent the true value of the plan. Since these plans have been regulated, rates have dropped. Companies are adequately protected; they can appeal a TDI rate determination, and have the right to present evidence with full due process. Rates are set at an amount that is fair to companies and consumers both.

Although these plans are technically not insurance, the companies themselves market the plans as "policies," and call their charges "premiums." These plans insure against the casualty of not being able to afford an attorney when legal services are needed and should be treated like insurance policies for rate regulation purposes regardless of the services offered.

Many members may remain with the plans long-term when measured nationwide. However, in Texas most members cancel the plans after eight or nine months, indicating a need for continued state regulation.

Exempting prepaid legal plans from rate regulation could open the door to exempting these plans from other insurance regulation, such regulations regarding exclusions and referrals, that are intended to protect the consumer.

**NOTES:**

The committee amendment to HB 1568 would make the exemption from Insurance Department regulation for prepaid legal services contracts apply only to establishing and maintaining rates. It also added an effective date and specified that the bill applied only to plans issued or renewed on or after September 1, 1993.